IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Criminal Contempt Petition No. 4 of 2006

Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Anil Mardikar Adv. for respondent No. 1.
Shri A. D. Sonak APP for State.

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CORAM : K. J. ROHEE &
C. L. PANGARKAR JJ.

Dated: 10th October, 2006.

The present matter arose out of Writ Petition No. 1074/06 in which the petitioner therein prayed for an enquiry into the construction of village tank known as Nimba Tank. In the said writ petition State of Maharashtra through the Secretary, Rural Development Department, Mantralaya, Mumbai; Zilla Parishad, Akola through Chief Executive Officer; District Rural

Development Agency, Akola through Project Director, and Executive Engineer, Minor Irrigation Division Akola were the respondents. The respondents No. 2, 3 and 4 filed their affidavit in reply to the said writ petition.

2. When the matter came up before the concerned Bench for hearing it was observed that totally contrary information was furnished to the Leader of Opposition in the Assembly. It was also noted by the Division Bench that the contemner furnished incorrect information by suppressing true information and, therefore, suo-motu proceedings have been initiated against the contemner.

3. The contemner appeared before us and filed affidavit in reply. We have also heard Shri. A. S. Mardikar, Advocate for the contemner and Shri A. D. Sonak, APP for State.

4. The matter relates to the construction of village tank at village Nimba, Tal. Balapur District Akola under the Scheme “Sampurna Gramin Rojgar Yojna” sponsored by the Central Government. Technical approval was

granted for construction of village tank at Nimba on 26.03.03 and administrative approval was granted on 31.03.03. A sum of Rs. 19,70,000/- was to be spent, which comprises cash of Rs.13,72,000/- and food grains of Rs.5,98,000/-. Accordingly the construction was started on 01.04.03.

5. It seems that on 24.11.05 the petitioner moved an application under Right to Information Act 2005, to the Information Officer D. R. D. A., Zilla Parishad, Akola seeking particulars in respect of the construction of the said village tank. On 19.01.06 under the signature of the contemner a communication was submitted to the Project Director D. R. D. A., Zilla Parishad, Akola wherein it was stated that the work had commenced on 01.04.03 and was completed on 31.03.05. It was also informed that a sum of Rs. 19,70,000/- was spent on the said construction work. A break up of the said amount in the form of cash and food grains was also given.

6. It seems that Shri Pandurang Fundkar, Leader of

Opposition in Maharashtra Legislative Council asked for the status of the said construction work. In response to the said querry Chief Executive Officer, Zilla Parishad, Akola sent him a comunication along with the forwarding letter dated 28.02.06 wherein it was informed that 31.03.05 was an expected date of completion of the work and that the work would be completed by 30.04.06. It was also informed that till then a sum of Rs. 10,62,769/- in the form of cash and food grains was spent. It was specifically informed that the said construction work would be completed by 30.04.06.

7. Thus the earlier communication dated 19.01.06 by the contemner to the Project Director, D. R. D. A., Zilla Parishad, Akola, is inconsistent so far as it relates to the date of completion of construction work and the amount spent on the construction.

8. It was pointed out by the learned counsel for the contemner that when the required amount is released for the specific work, the said amount has to be

spent during that financial year. In case that is not spent, the grant lapses. Hence, there is an established practice that whatever expenses, which are required to be incurred, are taken into consideration taking the date 31st March of that financial year as the basis, and accordingly report is submitted. From the communication made by the Chief Executive Officer, Zilla Parishad, Akola it is apparent that the construction work was not completed on 31.03.05 and that it was likely to be completed by 31.03.06. Even the entire amount of grant was not spent and substantial amount had remained to be spent. From these two communications we cannot jump to the conclusion that whatever was communicated by the contemner by his letter dated 19.01.06 to his superior was totally false. It might be incorrect.

9. It seems that the order granting administrative sanction was passed on 31.03.03 and funds were placed at the disposal of the concerned implementing Agency

on 31.03.03. The concerned order shows that the construction work should be completed before March 2003. It is obvious that such a work could not have been completed within a day. It seems that extension of time for completion of such work was required to be granted from time to time. Thus we are satisfied that there is no wilful submission of incorrect information by the contemner to his superiors.

10. There is another aspect of the matter. Section 2(c)(iii) of the Contempt Of Courts Act defines criminal contempt as the publication of any matter or the doing of any other act whatsoever, which interferes or tends to interfere or obstructs or tends to obstruct, the administration of justice in any other manner. Section 3 of the Contempt of Courts Act is material in this connection. Section 3(1) provides that the person shall not be guilty of contempt of court on the ground that he has published any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the

course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

Section 3(2) provides that notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

11. In the present case the Division Bench was of the view that the petitioner while applying under the Right to Information Act stated that the information was required for the purposes of filing the Public Interest Litigation in respect of the said village tank. Firstly, there is nothing on record to show that this was ever communicated to the contemner who was merely in-charge Sectional Engineer at the relevant time. Even-if it

is presumed that the contemner was aware that such an information was required for the purposes of Court proceedings, one thing is certain that when he supplied the information no proceedings were pending before any Court. There was no deliberate attempt on the part of the contemner to supply incorrect information. The action of the contemner was as per the practice prevalent about the completion of work and protecting the funds allotted from lapsing. Hence the contemner cannot be held guilty for Contempt of Courts Act. In the result we drop the proceedings and discharge the notice.

JUDGE **JUDGE**

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